IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/04/2004

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THE HONOURABLE MR. JUSTICE A.K. RAJAN

Criminal Appeal No. 483 of 1996

M.K.Sirajudeen (alias)
Mohammed Sirajuden .. Appellant

-Vs-

State
rep by the Inspector of Police
(Vigilance & Anti Corruption)
Dharmapuri.
(Cr.No.2/AC/88) .. Respondent

!For Appellant .. Mr. Balaguru
for Mr. C.Selvaraju

^For Respondent .. Mr. Subramaniam,
Govt. Advocate (Crl.Side)

Criminal Appeals filed against the order passed by the I Additional District Judge and Chief Judicial Magistrate, Krishnagiri in CC.No.160 of 1989 dated 17.6.1996.

:J U D G M E N T

This is an appeal against conviction for the offence u/s.13(1)(d) r/w Sec.13(2) of the Prevention of Corruption Act.

2. The appellant was working as a Revenue Inspector at Veppanapalli. On 10.9.1988 at about 9.00 a.m. he demanded Rs.20/- from one Venkatesan for countersigning the "Landless Labourer" Certificate, which was necessary for getting IRDP Loan through Bank. On 13.9.1988, after receiving Rs.20/- from the said Venkatesan, the accused gave the Certificate. Therefore, he was charged for the offence u/s.7 and 1 3 (2) r/w Sec.13(1)(d) of the Prevention of Corruption Act. To prove the charge, prosecution has examined PWs 1 to 18, marked Exs.P.1 to P.16, and produced MOs 1 to 8. D.W.1 was examined and Exs.D1 to D3 were marked on the side of defence.

3. When the appellant demanded money, the complainant preferred a complaint to the Vigilance & Anti-corruption Wings; thereafter, as

per the instructions he gave four five-rupee notes, and those numbers were recorded by the Inspector of Police; Phenolphthalein powder was sprayed on the notes and after demonstrating how it turns pink when dipped in a Sodium Carbonate solution; he along with the witnesses went to the Office of the accused, and the accused asked him whether he had brought the money? He gave the four five-rupee notes. After receiving the money, the accused gave the Certificate counter-signed by him. Immediately, as planned, the Inspector of Police came to the scene, recovered the four five-rupee notes from the accused and conducted the phenolphthalein test and it proved positive. The other witnesses speak to those facts in details. On the basis of the evidence, the trial Court found the accused guilty and sentenced him to undergo R.I. for six months and imposed a fine of Rs.10/- for the offence u/ s.7 of the Prevention of Corruption Act, and one year R.I. and imposed a fine of Rs.10/- for the offence u/s.13(1)(d) r/w.13(2) of the Prevention of Corruption Act. Aggrieved by the conviction and sentence, this appeal has been filed.

4. The learned counsel for the appellant submitted that he is not challenging the evidence adduced on the side of the prosecution. The only challenge is that there is no valid sanction for the prosecution of the accused. He contended that the accused was working as Revenue Inspector, only the District Collect has the power to dismiss him from service, and therefore, under the Prevention of Corruption Act only the Collector or any person above him can sanction the prosecution of the appellant. But, in this case, the sanction was accorded by the District Revenue Officer. Since the District Revenue Officer is not the authority who can remove him from service, the sanction given by him to prosecute the appellant does not satisfy the requirements for a valid sanction and hence the entire prosecution is vitiated. Therefore, the entire case of the prosecution fails and the appellant must be acquitted. The learned counsel also submitted that Ex.P.11/ Sanction order, has been marked through PW4. In his evidence he has stated that to appoint or to dismiss a Revenue Inspector, he has the right. In the cross-examination, a suggestion has been put to him that only the District Collector has the power to sanction the prosecution and that he had no power or authority to grant such sanctions. PW4 has denied that suggestion, but, he also admits that he he has not furnished any material or records to show that he had the right to appoint and to dismiss the Revenue Inspector.

5. The learned counsel for the appellant submitted that since there is a specific challenge to PW4 that he had no authority to accord sanction, it is the duty of the prosecution to furnish materials to show that he had the power to sanction the prosecution of the appellant herein. Since no such material has been furnished, the suggestion put to PW4 that he had no right to sanction the prosecution has to be construed to have been proved. In support of his arguments he relied upon the unreported judgment of this Court, in a similar case [in C. A.No.828 of 1996, dt.8.7.2003] M.CHOCKALINGAM, J., following the judgment of the Supreme Court in RAM KRISHAN PRAJAPATI v.. STATE OF U.P. [2000 SCC (Cri) 687] has held that -
"In the absence of any material to hold that the sanctioning authority at the relevant time, was the Joint Commissioner in-charge or he was competent to dismiss the respondent, the contention of the State that he was competent to accord sanction cannot be accepted."

Therefore, the learned counsel contended that there is no proof for a valid sanction.

6. The learned Government Advocate (Criminal Side) referred to the judgment of the Supreme Court in SHIVENDRA KUMAR v.. STATE OF MAHARASHTRA [2002 SCC (Cri) 564] where it has been held -
"In a case where it is seen that a sanction order has been passed by an authority who is competent under the law to represent the State Government, the burden is heavy on the party who challenges the authority of such order to show that the authority competent to pass the order of sanction is somebody else and not the officer who has passed the sanction order in question."
Further, he referred to further judgment of the Supreme Court in INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION, TAMIL NADU v.. PERIYASWAMY [C.A.No.667/93, dt.8.1.1998], where it has been held that -
"..the High Court's attention was not drawn to the provisions of Section 465 of the Code of Criminal Procedure which expressly lays down, inter alia, that any error or irregularity in any sanction for the prosecution shall not be a ground for reversing an order of conviction by the appellate Court unless in the opinion of that Court a failure of justice has in fact been occasioned thereby."
The learned Government Advocate (Criminal Side) submitted that there is no prejudice or failure of justice had occasioned to the accused.
The learned Government Advocate (Criminal Side) also referred to the judgment of this Court in RAJA SINGH v.. STATE [1995-1-LW (Crl.) 48] where it was held that failure to examine the validity granting sanction does not vitiate the legality of the order. Therefore, relying upon this judgment, he contended that there is a valid sanction in this case and there is no prejudice caused to the accused and hence the conviction cannot be set aside.

7. In the judgment referred to by the learned Government Advocate (Criminal Side), the Supreme Court has further held as follows:
"In view of the above provisions the High Court was required to decide, after recording a finding that there was some error or irregularity in the sanction, whether such error or irregularity occasioned a failure of justice and further whether such objection regarding the validity of the sanction was raised in the trial Court. Admittedly, the above point was not raised in the trial Court nor do we find anything on record from which it can be said that the error or irregularity in the sanction (even if we assume that the finding of the High Court in this regard is correct) did occasion any failure of justice."
In this case, as stated above, PW4 has been challenged in the crossexamination that he had no authority to accord sanction for prosecuting the appellant/accused. Though that suggestion has been put and the witness denied the same, there are no other material to substantiate the suggestion; mere suggestion cannot take the place of evidence. On the other hand, PW4 has specifically stated that he had the power to accord sanction, for prosecution. When there is such a specific evidence regarding the power to accord sanction by P.W.4, the person who had actually accorded, it is incumbent on the accused, who challenges that, to prove that P.W.4 had no power to accord

sanction; if necessary by calling for the relevant Rules. But that was not done. As per the decision of the Supreme Court, it is for the party who challenges to show that the authority competent to accord sanction is some other and not the person who accorded sanction.

8. That apart, as per the unreported judgment of the Supreme Court, referred to above, an error or irregularity in any sanction, shall not be the ground for reversing an order of conviction by the appellate Court unless a failure of justice had occasioned. In this case, no prejudice is shown to have been caused. Therefore, the conviction cannot be set aside on any ground. Hence, conviction is confirmed.

9. With reference to sentence, considering the facts of this case that the accused was charged for having received four 5 Rupee notes as bribe for countersigning the Certificate, the sentence, which has been imposed, appears to be very severe. Since the Prevention of Corruption Act requires a minimum sentence to be imposed [not less than one year], this Court cannot award a lesser sentence. Eventhough the case warrants a lesser sentence, the wisdom of Parliament cannot be questioned. But, such a sentence of imprisonment militates against the principle of proportionality of the punishment to the act committed. Hence, this Court is of the view that the sentence imposed may be remitted by the Government.

10. Since the conviction stands on a person who is a Government Servant and considering the fact that the same would affect all other benefits, this Court recommends for remission of the sentence of imprisonment imposed in its entirety and the person may be admonished by the Government.

11. With the above direction, the criminal appeal is disposed of. No costs.

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